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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,408	11/21/2003	Louis C. Cosentino	12771.0001USC1	3341
23552	7590	12/27/2007		
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			EXAMINER ASTORINO, MICHAEL C	
			ART UNIT 3736	PAPER NUMBER
			MAIL DATE 12/27/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/719,408

Applicant(s)

COSENTINO ET AL.

Examiner

Michael C. Astorino

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 90-118 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 90-118 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 90-98 and 100-118 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iliff US Patent Number 6,234,964 in view of Lloyd et al. US Patent Number 6,080,106.

Iliff discloses everything claimed except a monitoring apparatus (column 18, lines 16-43). But Iliff does disclose the use of taking health measurements (406).

However Lloyd et al. a reference in an analogous art discloses the use of a monitoring apparatus as claimed. See figure and abstract.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Iliff in view of Lloyd et al., since both inventions are directed at remotely monitoring patients, and Iliff requires a measurement be taken and Lloyd et al. teaches the manner in which to achieve the result.

Additionally Lloyd et al. discloses a modem (20), RF transmissions (column 6, lines 8-10), network communications with a nurse (80), and a visual display for an output (40).

Concerning claims 103-104, see Iliff (column 18, lines 16-43). Additionally, Lloyd et al. all inputs to questions with a value between 1 to 5 is a point, any point given is indicative of a nurse's follow-up to the patient. Stated otherwise the requirement is met when the user of the

system picks a value and the value is transmitted. Also, Lloyd et al. all inputs to questions with a value between 1 to 5 is a point, any point given is indicative of a nurse's follow-up to the patient. Stated otherwise the requirement is met when the user of the system picks a value and the value is transmitted. Moreover, totaling requirement is satisfied when only *one question* is asked and a point value is inputted and transmitted.

In regards to claim 93-96, 98, 107-110, and 112, Lloyd et al. disclose numerous communication devices (column 6, lines 8-10) but does not disclose RS-232 device, the Internet, or satellite communication devices. Official Notice is taken, that it is well known to one of ordinary skill in the art at the time of the invention was made that a RS-232 device, IR, the Internet, or a satellite communication device is equivalent to the communication devices disclosed in Lloyd et al. and the selection of any one the non-disclosed devices would have been an obvious substitution. Furthermore, Applicant has not disclosed that having a RS-232 device, IR, the Internet, or satellite communication device solves any stated problem or is for any particular purpose, it appears that the communication devices of Lloyd et al. would perform equally well with a RS-232 device, the Internet, and a satellite communication device or the communication devices of Lloyd et al.

In regards to claim 94 and 108, Iliff discloses the use of the Internet 102.

Claims 102, 105-106, 111, and 113-117 are rejected on substantially the same basis as the above claims.

In regards to claim 118, Applicant has added limitations from claims 90, 91, 98, and 101 together to form most of claim 118. As set forth above, a sound rationale has been provided for

all of the limitations of the claim, except the second “wherein” clause in limitation (b). The closest dependent claims are claims 103 and/or 104. The examiner has previously used Lloyd et al. to reject limitations in claims 103 and 104. However, Lloyd et al. by itself is not sufficient to reject the limitation in the second “wherein” clause in limitation (b). The second wherein clause in limitation (b) states, “wherein the processing computer determines a requirement for an exception by analyzing points associated with the answers from the patient by *totaling* the points from *two or more* answers and comparing the total with a threshold” (emphasis added). Neither Iliff nor Lloyd et al. teaches this function.

However, “[w]hen there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her grasp. If this leads to the anticipated success, it is likely the product is not of innovation but ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show it was obvious under 35 U.S.C. 103.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1742, (2007). As such it is the Examiner’s position that it would have been obvious to try to add to points together instead of just use one point to issue an exception.

Claim 99 is rejected under 35 U.S.C. 103(a) as being unpatentable over Iliff US Patent Number 6,234,964 in view of Lloyd et al. US Patent Number 6,080,106 (cited by applicant) as applied to claims above, and further in view of Drinan et al 6,354,996 B1. (cited by applicant)

Iliff and Lloyd et al. do not disclose a second portion having a wall mount. However, Drinan et al. a reference in an analogous art discloses a second portion with a wall mount (figure

1B, 4A and 4B). It would have been obvious to one in the art at the time of the invention to combine the second portion with a wall mount of Drinan et al. with the remote monitoring system of Lloyd et al. as an equivalent means to comfortably view display information to a user at eye level.

### ***Response to Arguments***

Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.

The Applicant argues two points. First there is no suggestion as to how one would modify the system, which dovetails with the Applicant second point, that Iliff teaches away from the a combination because Iliff uses a separate instrument to collect data. The Examiner is not persuaded by this argument.

As to the arguments, it is believe one of ordinary skill in the art would know how to combine the technology to make the modification occur. In fact, so long as the obviousness rejection takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See also, *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Additionally, the combination is much like making a mechanical process automated. And in the respect see MPEP 2144.04 [R-6].

*In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958) (Appellant argued that claims to a permanent mold casting apparatus for molding trunk pistons were allowable over the prior art because the claimed invention combined “old permanent-mold structures together with a timer and solenoid which automatically actuates the known pressure valve system to release the inner core after a predetermined time has elapsed.” The court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art.).

Although the facts are different in this case the holding applies. Otherwise stated, it is obvious to one of ordinary skill in the art to modify a manual process of taking a physiological measurement to automated process of taking a physiological measurement.

The Applicant is invited to contact the Examiner to request an interview to discuss suggestions to overcome the applied prior art. For example, the Examiner would look favorably on a response to claim 118 that explains why a rejection under *KSR* does not apply.

### ***Conclusion***

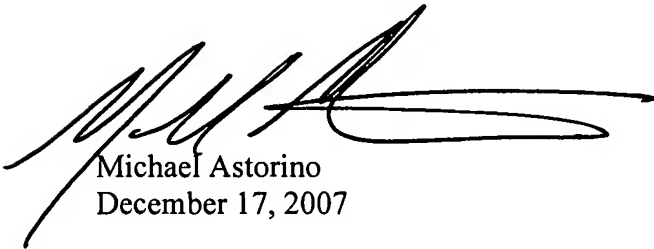
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Astorino whose telephone number is 571-272-4723. The examiner can normally be reached on Monday-Friday, 8:30AM to 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Michael Astorino  
December 17, 2007